

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: NATIONAL COLLEGIATE ) Docket No. 13 C 9116  
ATHLETIC ASSOCIATION STUDENT- )  
ATHLETE CONCUSSION INJURY ) Chicago, Illinois  
LITIGATION, ) November 8, 2017  
 ) 9:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiffs: HAGENS BERMAN SOBOL SHAPIRO, by  
MS. ELIZABETH A. FEGAN  
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SIPRUT PC, by  
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For Defendant NCAA: LATHAM & WATKINS, by  
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330 North Wabash Avenue  
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ALEXANDRA ROTH, CSR, RPR  
Official Court Reporter  
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1 (Proceedings had in open court:)

2 THE CLERK: 13 C 9116, NCAA Student-Athlete Concussion  
3 Injury Litigation.

4 MS. FEGAN: Good morning, your Honor. Elizabeth Fegan  
5 for plaintiff.

6 MR. McLAWHORN: Good morning, Todd McLawhorn for  
7 plaintiffs.

8 MS. LALLY: Good morning, your Honor. Kathleen Lally  
9 for NCAA.

10 THE COURT: Good morning.

11 So what happened with this notice?

12 MS. FEGAN: So we received a call from the notice  
13 administrator that they were cleaning up the files to  
14 transition them to Garretson for purposes of the medical  
15 monitoring program. And they discovered a bit -- a file from  
16 one school had been sitting in a queue and hadn't actually been  
17 downloaded. So --

18 THE COURT: For all files from one particular school?

19 MS. FEGAN: That's correct.

20 And what I received information last night, they  
21 deduped that file, but there are 9,239 unique records. And of  
22 those, 3,605 have an e-mail address. So these are not persons  
23 that had multiple addresses that have already received notice.  
24 These are folks that have not received notice.

25 And given the breadth of the notice program and our

1 desire to reach a hundred percent of the schools, we felt it  
2 necessary to, one, bring the issue to the Court's attention;  
3 but, two, to recommend that the dates be pushed back to allow  
4 notice to this additional small group but obviously important  
5 group to get notice.

6 THE COURT: Presumably the group received, may have  
7 received, notice through the other more public means, right?

8 MS. FEGAN: Absolutely, yes, your Honor. This has  
9 obviously been a very well publicized case from a press  
10 standpoint as well as the notice standpoint. So it's --

11 THE COURT: I don't really have any objection to  
12 extending the dates so that this final group can receive, will  
13 have an opportunity to receive, direct mail notice since, as I  
14 have been saying all along, that's a significant and important  
15 part of the notice program.

16 What worries me is extending the deadlines only for  
17 that group may create some confusion out there amongst people.  
18 So if you are part of the residual group, how would you know  
19 you're part of the residual group, versus -- because this  
20 order, whatever scheduling order I put, will go on line, right?  
21 -- versus if you just recently received your notice as part of  
22 the general notice provision, particularly because we've had  
23 the direct mailings go out in various phases, right?

24 And so that's the main concern I have, and really  
25 that's the only concern I have with regard to this.

1 MS. FEGAN: Your Honor, we could certainly -- the  
2 notices that folks have gotten to date obviously have their  
3 dates on them. This notice we could make clear that it's to  
4 persons receiving notice after today's date, and then have  
5 their dates in the card. We can certainly ask that the  
6 language of the postcard notice and the e-mail notice be  
7 tweaked to be very clear, and to have the settlement  
8 administrator or notice administrator on the website make clear  
9 that there are two separate set of deadlines. So it's not just  
10 an amendment of the deadlines, but that there are two separate  
11 sets of deadline and one ultimate hearing.

12 THE COURT: Okay.

13 MS. FEGAN: Or we could -- yes, Ms. Lally had a good  
14 idea. We could have the postcard be printed in a different  
15 color for this new group.

16 MS. LALLY: And then the website could perhaps reflect  
17 if you received a blue postcard your dates are these.

18 THE COURT: Okay. Also the proposed order should make  
19 it as clear as possible as to the group to whom the new  
20 deadlines will apply. I think the order as well as the website  
21 and what not should make it clear that for people that received  
22 notice before the date, that the prior deadlines would all  
23 apply.

24 MS. FEGAN: Okay.

25 THE COURT: I think if I'm not mistaken, the

1 concern -- is the concern that if we just change the dates for  
2 everyone that people who were diligent in providing their  
3 objections would be in some respect disadvantaged from other  
4 people that perhaps delayed and get another second bite at the  
5 apple with regard to filing their whatever objections or  
6 opt-outs they may have?

7 MS. FEGAN: That's correct.

8 MS. LALLY: Yes, your Honor.

9 THE COURT: With regard to the final fairness hearing  
10 then, the final supplement, the filing of the supplement to the  
11 motion for final approval or otherwise respond to the  
12 objections, I take it that's with regard to whatever objections  
13 would be received from the residual group.

14 MS. FEGAN: That's correct. We don't intend to  
15 retread old ground.

16 THE COURT: So the parties propose that they will file  
17 that by January 30. We will set the final fairness hearing to  
18 be March 1, at 2:00 p.m.

19 MS. FEGAN: Great.

20 THE COURT: And have any of you received any  
21 objections or comments with regard to the motion from any  
22 putative -- for any of the class members or other attorneys?

23 MS. FEGAN: We have not, your Honor.

24 MS. LALLY: We have not, your Honor.

25 THE COURT: Okay. Very well. So the joint motion for

1 entry of revised schedule is granted. The parties should go  
2 ahead and make it clear in the notice that goes out as well as  
3 the website and the proposed order exactly to whom the new  
4 deadlines would apply and to whom the new deadlines -- who  
5 would be bound by the prior deadlines of the Court.

6 I think the idea of making a different color is a good  
7 one. Whatever we can do to make sure that there is -- to  
8 minimize confusion with regard to the deadlines I think would  
9 be helpful. And otherwise the deadlines are adopted.

10 Okay. So once you send me the proposed order in the  
11 proposed order inbox, give Ms. Acevedo a call and let her know.

12 MS. FEGAN: Okay. Great. Thank you so much, your  
13 Honor.

14 THE COURT: Thank you.

15 MS. LALLY: Thank you, your Honor.

16 (Which were all the proceedings heard in this case.)

17 CERTIFICATE

18 I HEREBY CERTIFY that the foregoing is a true, correct  
19 and complete transcript of the proceedings had at the hearing  
20 of the aforementioned cause on the day and date hereof.

21  
22 /s/Alexandra Roth

11/27/2017

23 \_\_\_\_\_  
24 Official Court Reporter  
25 U.S. District Court  
Northern District of Illinois  
Eastern Division

\_\_\_\_\_  
Date